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EXAMINER

ANDERSON, CATHARINE L

ART UNIT

PAPER NUMBER

3761

DATE MAILED: 04/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/996,826

Applicant(s)

CHMIELEWSKI, HARRY J.

Examiner

C. Lynne Anderson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 January 2004, 23 February 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-85 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-85 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 21 January 2004 has been entered.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 16, 18-19 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Melius et al. (5,601,542).

With respect to claim 16, Melius discloses an absorbent article 10, as shown in figure 1, comprising an impermeable backsheet 12, a permeable topsheet 14, and an absorbent core 16. The absorbent core comprises a superabsorbent polymer, as disclosed in column 9, lines 48-50. The superabsorbent polymer is T-5209 available from Stockhausen, Inc., as disclosed in column 21, table 4. The superabsorbent polymer T-5209 has a Gel Integrity Index of less than about 500 kg mm, as disclosed by Niemeyer et al. (5,843,059) in column 17, tables 1 and 2. The absorbent core 16

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comprises about 30% to about 50% of a superabsorbent polymer, and about 50% to about 70% of wettable fibers, as disclosed in column 7, lines 13-20. The absorbent core 16 further comprises a stabilizing agent, as disclosed in column 6, lines 61-63.

With respect to claims 18-19, the superabsorbent polymer is crosslinked polyacrylate, as disclosed in column 5, lines 51-54.

With respect to claim 26, the absorbent article 10 is a diaper, as disclosed in column 8, line 66 through column 9, line 10.

Claims 1-16, 18-23 and 26-85 are rejected under 35 U.S.C. 102(b) as being anticipated by Chmielewski (5,891,120).

With respect to claim 1, Chmielewski discloses an absorbent article 10, as shown in figure 1, comprising an impermeable backsheet 14, a permeable topsheet 12, and an absorbent core 32. The absorbent core 32 comprises a superabsorbent polymer, as disclosed in column 4, lines 7-10. The superabsorbent polymer is a crosslinked polyacrylate, as disclosed in column 4, lines 10-12. The absorbent article has an AUL of less than 25 g/g under a load of 0.5 psi, as disclosed in column 4, line 64, and therefore the superabsorbent polymer must have an AUL of less than 25 g/g under a load of 0.3 psi. Chmielewski remains silent as to the Gel Integrity Index of the superabsorbent polymer, but discloses a superabsorbent polymer of the same type disclosed in the instant specification as having a Gel Integrity Index of less than about 500 kg mm. The Gel Integrity Index of a superabsorbent polymer is an inherent

property, and therefore the superabsorbent polymer of Chmielewski meets the limitation of the claim.

With respect to claims 2-5, the absorbent core 32 comprises 41% by weight of the superabsorbent polymers and 59% by weight of a wettable fiber, as disclosed in column 4, lines 15-17.

With respect to claim 6, the superabsorbent polymer has an AUL value of less than about 25 g/g, as disclosed in column 4, lines 25-26.

With respect to claims 7-8, the superabsorbent polymer is crosslinked polyacrylate, as disclosed in column 4, line 12.

With respect to claims 9-12, Chmielewski remains silent as to the Gel Integrity Index of the superabsorbent polymer, but discloses a superabsorbent polymer of the same type disclosed in the instant specification as having a Gel Integrity Index of less than about 0.05 kg mm, and between about 0.10 kg mm and 0.30 kg mm. The Gel Integrity Index of a superabsorbent polymer is an inherent property, and therefore the superabsorbent polymer of Chmielewski meets the limitations of the claims.

With respect to claim 13, the absorbent core additionally comprises an additive of wood pulp fibers, as disclosed in column 4, lines 7-9.

With respect to claim 14, the additive is a reinforcing agent.

With respect to claim 15, the absorbent article 10 is a diaper, as disclosed in column 3, lines 11-12.

With respect to claim 16, the absorbent core 32 comprises 41% by weight of the superabsorbent polymers and 59% by weight of a wettable fiber, as disclosed in column

4, lines 15-17. The absorbent core 32 further comprises a stabilizing agent, as disclosed in column 6, lines 12-13.

With respect to claims 18-19, the superabsorbent polymer is crosslinked polyacrylate, as disclosed in column 4, line 12.

With respect to claims 20-23, Chmielewski remains silent as to the Gel Integrity Index of the superabsorbent polymer, but discloses a superabsorbent polymer of the same type disclosed in the instant specification as having a Gel Integrity Index of less than about 0.05 kg mm, and between about 0.10 kg mm and 0.30 kg mm. The Gel Integrity Index of a superabsorbent polymer is an inherent property, and therefore the superabsorbent polymer of Chmielewski meets the limitations of the claims.

With respect to claim 26, the absorbent article 10 is a diaper, as disclosed in column 3, lines 11-12.

With respect to claim 27, Chmielewski discloses an absorbent article 10, as shown in figure 1, comprising an impermeable backsheet 14, a permeable topsheet 12, and an absorbent core 32. The absorbent core 32 comprises 41% by weight of a superabsorbent polymer, as disclosed in column 4, lines 7-10. The superabsorbent polymer is a crosslinked polyacrylate, as disclosed in column 4, lines 10-12 and 15-17. Chmielewski remains silent as to the Gel Integrity Index of the superabsorbent polymer, but discloses a superabsorbent polymer of the same type disclosed in the instant specification as having a Gel Integrity Index of between about 0.10 kg mm and 0.30 kg mm. The Gel Integrity Index of a superabsorbent polymer is an inherent property, and therefore the superabsorbent polymer of Chmielewski meets the limitation of the claim.

The superabsorbent polymer has an AUL value of less than about 25 g/g, as disclosed in column 4, lines 25-26.

With respect to claim 28, Chmielewski discloses an absorbent garment 10, as shown in figure 1, comprising an impermeable backsheet 14 and a permeable topsheet 12. The garment 10 further comprises a front waist portion and a rear waist portion which form a waist opening 20, a crotch region, and leg openings. An absorbent core 32 is disposed between the backsheet 14 and topsheet 12, and comprises a superabsorbent polymer, as disclosed in column 5, lines 7-10. Chmielewski remains silent as to the Gel Integrity Index of the superabsorbent polymer, but discloses a superabsorbent polymer of the same type disclosed in the instant specification as having a Gel Integrity Index of less than about 500 kg mm. The Gel Integrity Index of a superabsorbent polymer is an inherent property, and therefore the superabsorbent polymer of Chmielewski meets the limitation of the claim.

With respect to claims 29-32, the superabsorbent polymer is about 41% by weight of the absorbent core 32, as disclosed in column 5, lines 15-17.

With respect to claim 33, the superabsorbent polymer has an AUL value of less than about 25 g/g, as disclosed in column 4, lines 25-26.

With respect to claims 34-35, the superabsorbent polymer is crosslinked polyacrylate, as disclosed in column 4, line 12.

With respect to claims 36-39, Chmielewski remains silent as to the Gel Integrity Index of the superabsorbent polymer, but discloses a superabsorbent polymer of the same type disclosed in the instant specification as having a Gel Integrity Index of less

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than about 0.05 kg mm, and between about 0.10 kg mm and 0.30 kg mm. The Gel Integrity Index of a superabsorbent polymer is an inherent property, and therefore the superabsorbent polymer of Chmielewski meets the limitations of the claims.

With respect to claim 40, the absorbent core additionally comprises an additive of wood pulp fibers, as disclosed in column 4, lines 7-9.

With respect to claim 41, the additive is a reinforcing agent.

With respect to claim 42, Chmielewski discloses a composition comprising about 41% by weight of a superabsorbent polymer and about 59% by weight of wettable fibers, as described in column 5, lines 15-17. Chmielewski remains silent as to the Gel Integrity Index of the superabsorbent polymer, but discloses a superabsorbent polymer of the same type disclosed in the instant specification as having a Gel Integrity Index of between about 500 kg mm. The Gel Integrity Index of a superabsorbent polymer is an inherent property, and therefore the superabsorbent polymer of Chmielewski meets the limitation of the claim.

With respect to claims 43-44, the superabsorbent polymer is about 41% by weight of the composition, as disclosed in column 5, lines 15-17.

With respect to claim 45, the superabsorbent polymer has an AUL value of less than about 25 g/g, as disclosed in column 4, lines 25-26.

With respect to claims 46-47, the superabsorbent polymer is crosslinked polyacrylate, as disclosed in column 4, line 12.

With respect to claims 48-51, Chmielewski remains silent as to the Gel Integrity Index of the superabsorbent polymer, but discloses a superabsorbent polymer of the



same type disclosed in the instant specification as having a Gel Integrity Index of less than about 0.05 kg mm, and between about 0.10 kg mm and 0.30 kg mm. The Gel Integrity Index of a superabsorbent polymer is an inherent property, and therefore the superabsorbent polymer of Chmielewski meets the limitations of the claims.

With respect to claim 52, Chmielewski discloses a composition prepared by the process of combining 41% by weight of a superabsorbent polymer with about 59% by weight of wettable fibers, as disclosed in column 5, lines 7-17. Chmielewski remains silent as to the Gel Integrity Index of the superabsorbent polymer, but discloses a superabsorbent polymer of the same type disclosed in the instant specification as having a Gel Integrity Index of between about 500 kg mm. The Gel Integrity Index of a superabsorbent polymer is an inherent property, and therefore the superabsorbent polymer of Chmielewski meets the limitation of the claim.

With respect to claims 53-54, the superabsorbent polymer is about 41% by weight of the composition, as disclosed in column 5, lines 15-17.

With respect to claim 55, the superabsorbent polymer has an AUL value of less than about 25 g/g, as disclosed in column 4, lines 25-26.

With respect to claims 56-57, the superabsorbent polymer is crosslinked polyacrylate, as disclosed in column 4, line 12.

With respect to claims 58-61, Chmielewski remains silent as to the Gel Integrity Index of the superabsorbent polymer, but discloses a superabsorbent polymer of the same type disclosed in the instant specification as having a Gel Integrity Index of less than about 0.05 kg mm, and between about 0.10 kg mm and 0.30 kg mm. The Gel

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Integrity Index of a superabsorbent polymer is an inherent property, and therefore the superabsorbent polymer of Chmielewski meets the limitations of the claims.

With respect to claim 62, Chmielewski discloses a method of preparing a composition comprising combining about 59% by weight of wettable fibers and about 41% by weight of a superabsorbent polymer, as described in column 5, lines 7-17. Chmielewski remains silent as to the Gel Integrity Index of the superabsorbent polymer, but discloses a superabsorbent polymer of the same type disclosed in the instant specification as having a Gel Integrity Index of between about 500 kg mm. The Gel Integrity Index of a superabsorbent polymer is an inherent property, and therefore the superabsorbent polymer of Chmielewski meets the limitation of the claim.

With respect to claims 63-65, the superabsorbent polymer is about 41% by weight and the wettable fibers are about 59% by weight of the composition.

With respect to claim 66, the superabsorbent polymer has an AUL value of less than about 25 g/g, as disclosed in column 4, lines 25-26.

With respect to claims 67-68, the superabsorbent polymer is crosslinked polyacrylate, as disclosed in column 4, line 12.

With respect to claims 69-70, Chmielewski remains silent as to the Gel Integrity Index of the superabsorbent polymer, but discloses a superabsorbent polymer of the same type disclosed in the instant specification as having a Gel Integrity Index of less than about 0.05 kg mm, and between about 0.10 kg mm and 0.30 kg mm. The Gel Integrity Index of a superabsorbent polymer is an inherent property, and therefore the superabsorbent polymer of Chmielewski meets the limitations of the claims.

With respect to claim 71, Chmielewski discloses a method of preparing an absorbent core comprising combining about 59% by weight of wettable fibers and about 41% by weight of a superabsorbent polymer, as described in column 5, lines 7-17. Chmielewski remains silent as to the Gel Integrity Index of the superabsorbent polymer, but discloses a superabsorbent polymer of the same type disclosed in the instant specification as having a Gel Integrity Index of between about 500 kg mm. The Gel Integrity Index of a superabsorbent polymer is an inherent property, and therefore the superabsorbent polymer of Chmielewski meets the limitation of the claim. The absorbent core 32 is then disposed between an impermeable backsheet 14 and a permeable topsheet 12, as shown in figure 2.

With respect to claims 72-76, the superabsorbent polymer is about 41% by weight and the wettable fibers are about 59% by weight of the absorbent core 32, as disclosed in column 5, lines 15-17.

With respect to claim 77, the superabsorbent polymer has an AUL value of less than about 25 g/g, as disclosed in column 4, lines 25-26.

With respect to claims 78-85, Chmielewski remains silent as to the Gel Integrity Index of the superabsorbent polymer, but discloses a superabsorbent polymer of the same type disclosed in the instant specification as having a Gel Integrity Index of less than about 0.05 kg mm, and between about 0.10 kg mm and 0.30 kg mm. The Gel Integrity Index of a superabsorbent polymer is an inherent property, and therefore the superabsorbent polymer of Chmielewski meets the limitations of the claims.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 17 rejected under 35 U.S.C. 103(a) as being unpatentable over Melius et al. (5,601,542) as applied to claim 16 above.

Melius discloses all aspects of the claimed invention with the exception of the AUL being at 0.3 psi. It would have been obvious to one of ordinary skill in the art at the time of invention for the superabsorbent polymer to have an AUL value of less than 25 g/g at 0.3 psi, since it has been held that where the general conditions of a claim are disclosed in the art, finding the optimum or workable ranges involves only routine skill in the art.

Claims 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Melius et al. (5,601,542) as applied to claim 16 above, and further in view of Roberts et al. (3,875,942).

Melius discloses all aspects of the claimed invention with the exception of a medicament additive. Roberts discloses an absorbent article 10, as shown in figure 1, having an absorbent core 14, the absorbent core 14 comprising a medicament, as described in column 1, lines 36-40, to maintain the wellness of the wearer's skin.

It would therefore have been obvious to one of ordinary skill in the art at the time of invention to construct the absorbent article of Melius with the medicament of Roberts to maintain the wellness of the wearer's skin.

Claim 17 rejected under 35 U.S.C. 103(a) as being unpatentable over Chmielewski (5,891,120) as applied to claim 16 above.

Chmielewski discloses all aspects of the claimed invention with the exception of the AUL being at 0.3 psi. It would have been obvious to one of ordinary skill in the art at the time of invention for the superabsorbent polymer to have an AUL value of less than 25 g/g at 0.3 psi, since it has been held that where the general conditions of a claim are disclosed in the art, finding the optimum or workable ranges involves only routine skill in the art.

Claims 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chmielewski (5,891,120) as applied to claim 16 above, and further in view of Roberts et al. (3,875,942).

Chmielewski discloses all aspects of the claimed invention with the exception of a medicament additive. Roberts discloses an absorbent article<sup>10</sup>, as shown in figure 1, having an absorbent core 14, the absorbent core 14 comprising a medicament, as described in column 1, lines 36-40, to maintain the wellness of the wearer's skin.

It would therefore have been obvious to one of ordinary skill in the art at the time of invention to construct the absorbent article of Chmielewski with the medicament of Roberts to maintain the wellness of the wearer's skin.

***Response to Arguments***

Applicant's arguments filed 14 July 2003, with respect to the rejection of claims 1-8, 13-15, 28-35, 40-47, 52-57, 62-66, and 71-77 under 35 U.S.C. 102(b) as being anticipated by Melius et al. (5,601,542) have been fully considered and are persuasive. The rejection in view of Melius et al. has been withdrawn.

Applicant's arguments filed 14 July 2003 with respect to the rejection of claims 16-19 and 24-26 under 35 U.S.C. 102(b) as being anticipated by Melius et al. (5,601,542) have been fully considered but they are not persuasive.

In response to applicant's argument that the reference fails to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., an AUL value) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant's arguments filed 14 July 2003 with respect to the rejection of claims 1-81 under 35 U.S.C. 102(b) as being anticipated by Chmielewski (5,891,120) have been fully considered but they are not persuasive.

In response to applicant's argument that the reference fails to show a Gel Integrity Index of less than about 500 kg mm, and that a Gel Integrity Index is not a value inherent to the materials, it is noted that the materials disclosed by Chmielewski

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are also disclosed as suitable materials in the instant specification. The instant specification fails to further disclose a preferred embodiment having a Gel Integrity Index of less than about 500 kg mm, and does not disclose the results of the method for determining the Gel Integrity Index for any samples. It is therefore the examiner's position that, in view of the instant specification, the materials disclosed as suitable for the instant invention must have a Gel Integrity Index of less than about 500 kg mm, in order to meet the criteria set out for the instant invention.

Applicant's arguments filed 21 January 2004 with respect to the rejection of claims 1-23 and 26-85 under 35 U.S.C. 102(b) as being anticipated by Chmielewski (5,891,120) have been fully considered but they are not persuasive.

With respect to the rejection of claims 1-23 and 26-85 under 35 U.S.C. 102(b) as anticipated by Chmielewski (5,891,120), Chmielewski discloses a product having substantially identical structure and composition as the claimed invention, and therefore a prima facie case of anticipation has been established (see MPEP 2112.01). The instant invention comprises a superabsorbent polymer, polyacrylate (see claim 8). Chmielewski discloses a superabsorbent polymer, polyacrylate, in column 4, line 12, and therefore discloses a product having the same structure as the claimed invention. Further, the superabsorbent polymer disclosed by Chmielewski fulfills the claimed limitation of an AUL value of less than about 25 g/g at 0.3 psi, as described in column 4, line 64. The Gel Integrity Index measures the resistance of the superabsorbent polymer after absorption, as described in the instant specification on page 10, lines 11-25. The instant specification discloses, on page 11, lines 13-15, that superabsorbent polymers

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having a Gel Integrity Index within the claimed range exhibits superior absorbency. The superabsorbent polymer of Chmielewski discloses the same superior absorbency of the claimed invention, and it would follow that the superabsorbent polymers of Chmielewski would likewise display the same Gel Integrity Index as the claimed invention. The rejection of claims 1-23 and 26-85 under 35 U.S.C. 102(b), and therefore also claims 24 and 25 under 35 U.S.C. 103(a) in view of Chmielewski is proper.

Applicant's arguments filed 21 January 2004 with respect to the rejections of claim 16 under 35 U.S.C. 102(b) as being anticipated by Chmielewski (5,891,120) and Melius et al. (5,601,542) have been fully considered but they are not persuasive.

Chmielewski and Melius both disclose the use of a stabilizing agent, as described in the rejections above.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number is (703) 306-5716. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor John Calvert can be reached on (703) 305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

UMA

cla

April 18, 2004

  
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